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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,509	04/05/2001	John Hindman	ODS-37	6107
1473	7590	05/24/2005	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105			COBURN, CORBETT B	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/827,509

Applicant(s)

HINDMAN ET AL.

Examiner

Corbett B. Coburn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-62 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 22 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9, 12, 17, 18, 20-22, 30 & 31 are rejected under 35 U.S.C. 102(b) as being anticipate by Gordon (US Patent Number 2,271,508).

Claims 1, 17: Gordon teaches a method for providing the projected effects of wagering on pari-mutuel pools to a user in an interactive wagering system. The user provides input concerning a proposed wager that is associated with at least one pari-mutuel pool, pari-mutuel pool information, and the current odds for the proposed wager. The device calculates information that affects the user's potential winnings (i.e., the revised odds and payout) based on the user input and provides that information to the user. The device takes into account the amount of the proposed bet on the odds, thus providing the effect the proposed wager would have on the pari-mutuel pool to the player. (Col 3, 5-10)

Gordon's device calculates projected odds in real time using an analog computer. Prior to the player entering the proposed bet information, the system displays the current odds. The player enters a proposed bet on a particular horse into the computer via the input devices shown in Figs 2-4. This increases the resistance of the circuit to an amount that represents the total value of the pool *including the proposed bet*. The circuitry then

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balances the resistance across the arms of the circuit to arrive at the projected odds. The projected odds are displayed to the player.

Claims 2, 18: The user input is a wager amount. (Figs 2-4)

Claims 3, 19: The user input comprises selection of a wager type (i.e., win, place, or show). (See Col 6, 13-30 for description of calculation of show odds.)

Claims 4-6, 20-22: Gordon teaches a calculator for figuring the current and projected odds for a particular horse in a particular race. This inherently comprises the selection of at least one horse in a race at a particular racetrack.

Claim 7: The information obtained is pari-mutuel pool information. (Col 1, 39-46)

Claim 8: The device can be used to determine current odds on a wager. (Col 1, 17-26)

Claim 9: The projected effect the proposed wager can have on the pari-mutuel pool is the projected odds for the proposed wager.

Claims 12, 31: The projected effects are displayed to the user. (Col 3, 20-26)

Claim 30: Gordon's device is a computer.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10, 11, 13-16, 23-39 & 32-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon as applied to claim 1, 17 above, and further in view of Mindes (US Patent Number 5,573,244).

Claim 10, 23: Gordon teaches the invention substantially as claimed, but does not teach a telephone as the user interface. Mindes teaches providing input to a similar system via telephone. (Col 6, 29-32) Mindes describes the use of a digital electronic computer to calculate odds information. Use of a digital computer instead of the analog computer described in Gordon requires an appropriate method of data input. Furthermore, the telephone is a ubiquitous device – virtually every household has one. This allows access to the system by more people, thus increasing the possible profits. It would have been obvious to one of ordinary skill in the art at the time of the invention to have a telephone as a part of the user interface in order to provide an appropriate input device for a digital computer to replace the analog computer described in Gordon while ensuring that most people have access to the system, thus increasing profit potential.

Claims 11, 14, 16, 24, 25, 27: Gordon teaches showing the projected effect (i.e., announcing or displaying the projected effect) to the user.

Claims 13, 26: Mindes teaches a user interface that includes a set top box. (322)

Claim 15: Mindes teaches a user interface that includes a computer. (302)

Claims 28: Mindes teaches displaying information about the game in windows. (Col 6, 33-38) While not disclosed in connection with a set top box, these windows serve to separate the information concerning different races, thus reducing player confusion. It would have been obvious to one of ordinary skill in the art at the time of the invention to have displayed the projected effects information in a window on a television in order to separate the information concerning different races, thus reducing player confusion.

Claim 29: Gordon teaches the invention substantially as claimed. Gordon teaches displaying both the current odds and the projected odds. The current odds are displayed prior to entering the proposed bet information and the projected odds are displayed by the calculator after entering the proposed bet information. Gordon does not teach displaying the odds in windows on a computer screen and toggling between current and projected odds screens. Mindes teaches displaying information about the game, including odds, in windows. (Col 6, 33-38) Mindes teaches that the window may occupy the entire screen. It is well known to toggle between windows that fill the entire screen.

Claims 32-62: Claims 32-62 are merely a restatement of claims 1-31 specifying electronic circuitry to perform the functions described therein. Gordon teaches the use of electronic circuitry to perform the input, calculation, or display functions, but does not teach use of a digital computer. Mindes teaches using an electronic digital computer (300) to perform such functions. Electronic digital computers are extremely well known to the art. They are used to automate manual functions involving input, calculation, and display of data. They are easier to program than analog computers and are more flexible. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used an electronic digital computer to perform the input, calculation and display functions described in order to replace the analog computer described in Gordon with a modern device that is easier to program and more flexible.

Response to Arguments

5. Applicant's arguments filed 16 March 2005 have been fully considered but they are not persuasive.

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6. Applicant argues that Gordon fails to anticipate the claimed invention because Gordon uses actual bets to calculate odds instead of proposed bets. Examiner disagrees. As pointed out in the previous office action, Gordon teaches a device in which the amount bet may be added to the pool to calculate odds and then subtracted from the pool. This suggests that the bets are not final – they would not be subtracted otherwise. Furthermore, Gordon does not say that he device finalizes the bet. Gordon's device does not collect the money. Nor does Gordon teach that the device is only used after the money has been taken. Until the money has actually been collected, the bet is not final. Examiner contends that any bet is a proposed bet until the money actually changes hands. Gordon is silent on the question of when the money changes hands. Therefore, the bets discussed by Gordon are assumed to be proposed bets. Unless Applicant can show that Gordon's device will only work after the player has finalized the bet by transferring the money to the bookmaker, Examiner must assume that at very least Gordon's device has the inherent ability to process proposed bets.

7. Applicant states that Gordon's teaching of the ability to subtract resistance does not apply to the betting device disclosed in Figs 1-4. While Figs 1-4 most clearly show the details of Applicant's claimed invention, Gordon clearly indicates that the Figs 5-8 depict equivalent devices to those shown in Figs 1-4. Fig 5, for instance is a "combined resistance varying and indicating device which may be used in conjunction with the circuit." (Col 3, 44-46, Emphasis added.) Fig 6 is a side view of the device of Fig 5. The use of the device of Fig 7 (and thus Fig 8) to determine the odds is disclosed at Col 11, 42. Furthermore, Gordon's disclosure states:

From the foregoing it will be apparent that devices of the type described above are capable of automatic operation to add, subtract, divide or multiply and that a

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simple construction has been provided which is particularly suitable for pari-mutuel betting. (Col 11, 53-57)

8. In short, Gordon discloses using a device that includes a subtraction capability in connection with determining the odds in pari-mutuel betting. As previously pointed out, this means that the device described by Gordon inherently has the ability to process proposed bets – if the bettor changes his mind, the device has the ability to take the amount of the proposed bet out of the calculation. This further strengthens Examiner's assertion that Gordon teaches using proposed bets during the calculations.

9. Examiner wants to be crystal clear about this issue of proposed bets. Examiner contends that no bet is finalized until the money actually changes hands. Even if Gordon did not teach a subtraction feature, Gordon's device is inherently capable of using proposed bets to perform the calculation. Gordon's device will work whether money has changed hands or not. But the fact is that Gordon emphatically **does** teach the ability to subtract amounts that have been entered as a bet. This feature only makes sense when using proposed bets, because once a bet has been finalized (i.e., once money has changed hands), the bet cannot be changed. As pointed out in the previous office action, bettors cannot walk up to the window of a racetrack and ask for a refund. Once a bet is finalized it cannot be changed. Therefore, if Gordon only used finalized bets, there would be no reason to have the disclosed subtraction feature.

10. Applicant argues that there are other reasons to include a subtraction feature, but Applicant cannot point to any part of Gordon's disclosure that supports that contention. Even if the Applicant is correct in assuming that the subtraction feature may have another use, the

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Applicant has not and cannot argue that Gordon is not inherently capable of performing the claimed function.

Conclusion

11. This is an RCE of applicant's earlier Application No. 09/827,509. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

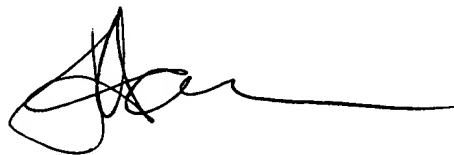
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Jessica Harrison can be reached on (571) 272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Corbett B. Coburn
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Art Unit 3714



JESSICA HARRISON
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